IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8091 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAANSUKHLAAL CHHAAGANLAL NAAGORI,AAGED 56.,EX-BRANCH

Versus

REGIONAL MANAGER,UNION BANK OF INDIA,

Appearance:

1. Special Civil Application No. 8091 of 1988

MR SB PANDIT for Petitioner No. 1

MR KM PATEL for Respondent No. 1-2

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 19/08/2002

ORAL JUDGEMENT

1. This petition has been filed by a former employee of the respondent - Bank. At the relevant time the

petitioner was working as Branch Manager at Dewa branch. The petitioner was placed under suspension with effect from 6th November, 1984 on the ground that he had committed certain acts of misconduct for which investigation and departmental inquiry were then in contemplation. Thereafter, the petitioner was served with an order of dismissal dated 13th November, 1987. For challenging the said order, the petitioner approached this Court by filing Special Civil Application No.3052/1988, which was dismissed by the learned Single Judge of this Court by judgment dated 22nd June, 1988. Against the judgment dismissing the petition, the petitioner preferred Letters Patent Appeal before the Division Bench of this Court which was also dismissed and the order terminating the service of the petition has become final as no further proceedings were preferred by him for that purpose.

1.1. The case of the petitioner in this petition is that the allegation against him was that under a scheme which was part of 20-point economic programme sponsored by late Prime Minister Smt.Indira Gandhi, a scheme was formed in which loans of small amounts were being disbursed to a particular class of persons having small scale industries. This scheme was being implemented through the respondent - bank. Against the petitioner, allegation was levelled that he had deliberately advanced loans to such persons from whom the recovery of the loan amount was almost impossible. It was also alleged that certain loan amounts which he was required to recover, were not recovered by the petitioner and ultimately these reckless acts of the petitioner resulted into substantial monetary loss to the Bank. The petitioner's say is that though challenge to the aforesaid allegations now no more exits, the action of the respondent - Bank withholding the Gratuity and Provident Funds amount of the petitioner was bad in law inasmuch as the respondent - Bank had not complied with the provisions of Provident Fund Rules as well as Rules framed by the Bank for the purpose of Payment of Gratuity. He has placed reliance on the Provident Fund Rules No.17 & 18 and has averred that unless and until the petitioner is made aware of the exact amount of loss caused to the Bank on account of misconduct, such action could not be resorted to by the respondent - Bank. So far his Contribution to the Provident Fund is concerned the same has been paid. However, the respondent - Bank seeking the shelter under the aforesaid rules has not paid the Bank's Contribution towards the P.F. amount for the petitioner on the ground that the financial loss on account of the misconduct of the petitioner was greater than the amount to be paid to

the petitioner by way of Employers' Contribution towards P.F. Similarly, for the same reason, with regard to payment of Gratuity, the petitioner was intimated vide letter dated 29th August, 1988 by the respondent - Bank that the gratuity of Rs.20,875/- payable to the petitioner was fully forfeited as per the respondent Bank's Gratuity Rules, since the financial loss that was likely to be caused to the said bank was to the extent of Rs.1,74,777.65 paise. The petitioner made several representations to the respondent - Bank urging that he was entitled to receive the Banks' Contribution towards the P.F. and the same could not be kept in abeyance for indefinite period on the ground that the Bank was likely to suffer financial loss on account of the misconduct of the petitioner. He has also requested the Bank to release the amount of gratuity urging that since the Bank was not able to establish the financial loss on account of petitioner's misconduct, it could not withhold the gratuity payable to the petitioner. According to the petitioner he was entitled to receive Rs.65,556.99 towards P.F. and Rs.43,875/- towards gratuity. According to the petitioner, the respondent - Bank received a letter dated 8th May, 1995 from the Assistant General Manager (I.R.) from the Central office of the respondent - Bank at Bombay stating that upon receiving the confirmation from Zonal office, Ahmedabad, that the respondent - Bank had sustained substantial loss due to negligence shown by the petitioner while sanctioning the loans as Branch Manager, Dewa Branch, the Bank was not in a position to release the Employees' Contribution towards P.F. and Gratuity in favour of the petitioner. All these correspondence is now part of this petition.

2. Mr.Sharad B. Pandit learned counsel for the petitioner has submitted that the decision of the respondent - Bank not to release the P.F. amount as well as of Gratuity in favour of the petitioner is absolutely unjust and arbitrary. He has further submitted that the respondent - Bank could not have resorted to such action without following due procedure as laid down in the Union Bank Employees Provident Fund Rules ("P.F. rules" for short). He has furnished a compilation of the P.F. rules and has drawn my pointed attention to Rules no.17 & 18 of the P.F. Rules. A copy of which is supplied to me by Mr. Pandit. Rules nos. 17 & 18 read as under :-

"Rule no.17 :

Any contributor who is dismissed for insubordination, misconduct, fraud or any other cause of like nature or retires from the Bank in consequence thereof shall only be entitled to

repayment of the amount of his own contribution with the interest accrued thereon at the rate and in the manner aforesaid. The Trustees shall be the sole Judges of the sufficiency of the cause of the dismissal or retirement of any contribution in any of the foregoing cases."

2.1. However, according to Mr.K.M. Patel learned counsel for the respondent - Bank, Rule no.17 as contained in the booklet published by the respondent Bank regarding P.F. rules contains amendments upto December, 1987. The amended contents of Rule no.17 are slightly different. He has also furnished the amended booklet wherein Rule no.17 of P.F. rules is stated as under :-

"Rule no.17

Any contributor who is dismissed for insubordination, misconduct, fraud or any other cause of like nature or retires from the Bank in consequence thereof shall be entitled to his own contribution with interest accrued thereon at the rate and in the manner aforesaid and in respect of Bank's contribution there shall be no forfeiture, excepting in the case where he is dismissed for misconduct causing financial loss to the Bank and in such case forfeiture shall be limited only to the extent of financial loss caused."

2.2. Rule no.18 is common in the compilations furnished to me by the both the counsels. Rule no.18 reads as under :-

"Rule no.18 :

If a contributor is dismissed for fraud or misconduct the Bank shall be entitled to recover from the contributions made by the Bank to the individual account of the contributor and the interest (simple and compound) credited in respect of such contributions, any loss or damage so resulting to the Bank from the cause entailing such dismissal. The Board shall be entitled to declare the amount of loss or damage so resulting and their declaration in that behalf shall be final and conclusive and the amount so declared shall be paid to the Bank."

2.2. According to Mr.Pandit the respondent - Bank has completely overlooked these provisions and have denied the retiral benefits which the petitioner was legitimately entitled to receive in law. According to him Rule no.17 entitles a contributor who is dismissed from the service for insubordination, misconduct, fraud or any other cause of like nature or retires from the Bank in consequence thereof, he shall be entitled to his own contribution with interest accrued thereon. He has further submitted that so far the Bank's contribution is concerned, Rule no.17 envisages that the same cannot be forfeited unless the alleged misconduct has resulted into financial loss to the respondent - Bank and the forfeiture that may be resorted to would be limited only to the extent of the financial loss caused to the Bank. Thus according to Mr.Pandit unless the Bank comes to the conclusion that it has suffered financial loss on account of misconduct of its employee for which he is dismissed from the service, no forfeiture of the Bank's contribution from whole or any part thereof can be availed of by the Bank. He has also submitted that it is incumbent on the Bank to first come to the conclusion that it had suffered monetary loss on account of negligence of the contributor. He has also drawn my attention to the provisions of Rule no.18 of the P.F. rules and has submitted that in case the Bank comes to the conclusion that it has suffered some monetary loss and it is entitled to recover from contribution of the bank in the individual account of the contributor on account of misconduct entailing dismissal of the contributor, it will be the Board of Directors of the Bank which will be authorised to ascertain the extent of loss or damage which had resulted on account of misconduct entailing dismissal of the contributor and such loss or damage was required to be declared by the Board and upon such declaration being made, the loss or the damage would become final and conclusive and such amount will be required to be paid to the Bank from its contribution to the P.F. of the contributor. Mr.Pandit has laid a stress on the portion of this Rule whereby such declaration is made compulsory for the Board of Directors of the Bank and has submitted that unless and until such declaration is made, the amount of loss or damage cannot be said to have been determined. He has further submitted that before resorting to the action of the forfeiture of the Employers contribution towards the contributors P.F., the indication or determination of financial loss suffered by the Bank on account of alleged misconduct resulting into dismissal of the contributor is done, and unless that is done, the amount of employers contribution towards the P.F. cannot be forfeited.

Mr.Pandit has drawn my attention to the record of this petition including the affidavit-in-reply filed by the other side and has submitted that at no point of time prior to taking the decision to forfeit the Bank's contribution amount of financial loss suffered by the Bank on account of misconduct resulting into the termination of the service of the petitioner is not determined in the manner prescribed in Rule no.18. He has, therefore, submitted that the condition precedent required for forfeiture of the amount is not fulfilled and the Banks action withholding and forfeiting the amount of its contribution towards the P.F. of the contributor i.e. the petitioner is illegal.

2.3 Similarly he has pressed into service more or less the same arguments for the purpose of challenging the action of respondent - Bank withholding the amount of Gratuity. He has drawn my attention to the Union Bank of India Employees Gratuity Fund Rules ("gratuity fund rules" for short) and in particular to Clause - 3 Schedule - A. Clause - 3 of schedule - A reads as under:-

> "In case of termination of service of the Member on account of misconduct, Gratuity payable either under, Clause 1 or 2 hereof shall not be forfeited, except where such misconduct causes financial loss to the Bank (of which and of the amount of which the Bank shall be the sole Judge and its decision final) and in that case the forfeiture of the Gratuity shall be to extent of the financial loss only. The term "misconduct" for this purpose shall inter alia include any act or wilful omission or negligence causing any damage or loss to or destruction of property belonging to the Bank. Gratuity payable under Clause 1 hereof shall be forfeited if the services of the Member have been terminated for his riotous or disorderly conduct or any other act of violence on his part or for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

2.4 He has submitted that the Gratuity which otherwise became payable to the petitioner upon his service coming to an end was not paid on the ground that the respondent - Bank was likely to suffer some monetary loss on account of petitioner's negligence in the matter of disbursing loans. Despite repeated requests no response was received by the petitioner from the Bank and

ultimately, on 8th May, 1995 the Bank's decision withholding the Gratuity alongwith P.F. was conveyed to the petitioner by the Assistant General Manager (I.R.) Central office at Bombay. Mr.Pandit has also placed reliance on the decision rendered by the Division Bench of this Court in the case of Central Bank of India v. Ghanshyamlal Mohanlal Jani reported in 1981 G.L.R. at page 145 and he has submitted to this Court that the facts of the present case and facts of the case under consideration of the Division Bench of this Court are very similar and the ratio laid down in this judgment squarely applies to the present case.

2.5. As against that Mr.K.M. Patel learned counsel for the respondent - Bank has submitted that the respondent - Bank was amply justified in forfeiting its contribution towards P.F. and also the amount of Gratuity because of the financial loss suffered by the Bank on account of the petitioner's gross negligence was far in excess to the amount required to be forfeited by the Bank under both the heads. He has further submitted that while taking the decision of forfeiting the said amount the respondent - Bank has fully complied with the relevant provisions of the P.F. rules as well as Gratuity rules and clause - 3 of schedule A of the Gratuity fund rules. Therefore, in these circumstances the action of the Bank cannot be termed as illegal and high-handed and arbitrary and also without following the principle of natural justice. Lastly, he has submitted that even if the Court comes to the conclusion that the declaration as required under Rule no.18 by the Board was not made, this Court at the most will call upon the Board to carry out that exercise and make necessary declaration with regard to the financial loss determined by it. He has further submitted that merely because the declaration as envisaged under Rule no.18 is not made, the petitioner cannot be granted the reliefs prayed for in this petition.

3. From the record of this petition, and also the rival contentions, it clearly appears that the main controversy which is required to be resolved is whether necessary formalities envisaged under Rules no.17 & 18 of P.F. rules and in Clause - 3 schedule - A of the Gratuity Fund rules were complied with and if not what could be the effect thereof. As the facts of the case stand, it is not in dispute that while the petitioner was working at Dewa branch as Branch Manager, he was served with the chargesheet containing several allegations which have been setout in annexure-A to the affidavit-in-reply filed by the respondent - Bank. Annexure-A is under two

parts; the first part contains Articles of charges served and the second part contains statement of allegations. It is dated 29th November, 1984. The Articles of charges are six in number. They are as under :-

1. Acts unbecoming of a Bank Officer.

2. Failure to discharge his duties with utmost care, honesty, integrity, devotion and diligence.

3. Acting in a manner prejudicial to the interest of the Bank.

4. Flouting Bank's rules in granting advances.

5. Acceptance of illegal gratification from the borrowers for sanctioning loan.

6. Orders negligence likely to involve the Bank in serious monetary loss

3.1. The statement of allegations indicate that the petitioner had disbursed various loan amounts even to the persons who were not residing in the vicinity of the concerned Dewa branch and they were the residents of the places which were distantly situated and, therefore, there was some ulterior motive on the part of the petitioner to advance loans to such borrowers. It also shows that in certain cases the documents were executed outside the Bank premises of the Dewa branch i.e. either at the residence of the petitioner or at the residence of the borrowers. Similarly, it also appears from this statement that the loans were advanced on fake certificates produced by intending borrowers and that fact was within the knowledge of the petitioner. As already stated above, these allegations were ultimately held established at the end of the inquiry which was conducted against the petitioner and based on those findings the order of dismissal from the service was passed. It is also an admitted fact that the petitioner's challenge to the validity of order of dismissal failed and that order has now become final.

4. Now Reverting back to Rule nos.17 & 18 of P.F. rules they can be analysed in several parts. So far as Rule no.17 is concerned the first requirement is dismissal of the contributor for act of insubordination, misconduct, fraud or any other cause of a like nature or retirement from the service of the Bank in consequence

thereof. The second part is that upon such event happening, the contributor will be entitled to receive his own contribution with interest accrued thereon at the rate and in the manner prescribed by relevant provisions. made in that behalf. The third factor is that in such event there shall be no forfeiture of the Bank's contribution except in cases, where the contributor is dismissed for the misconduct causing financial loss to the Bank there shall be forfeiture of the Banks contribution and lastly that such forfeiture will be in accordance with the loss that may have been caused to the Bank on account of negligence of the contributor. In the instant case, as can be seen from the aforesaid narration, the petitioner was dismissed on account of acts of misconduct based on fraud committed by the petitioner in the matter of disbursing loan. Therefore, before resorting to the action of forfeiture the Bank was required to work out the financial loss that had been caused to the Bank on account of the petitioner's misconduct. Unless & until that financial loss was determined the last part of Rule no.17 could not be brought into play namely that forfeiture has to be only to the extent the loss is caused. Therefore, even according to Rule 17 the Bank is required to ascertain monetary loss caused to it by the petitioner's negligence, without doing that exercise the Bank will not be entitled to forfeit the Employer's contribution wholly or partly.

4.1. Power to determine and declare the monetary loss suffered by the Bank is conferred upon the Board of Directors of the Bank by Rule 18 of the P.F. Rules. The gist of Rule 18 is that in case the Bank is entitled to recover the contribution made by it to the individual account of the contributor together with interest for the loss or damage resulted to the Bank, the Board shall be entitled to declare the amount of loss or damage so resulting. Thus the power of an authority to compute the financial loss or determine the damage is required to be exercised by the Board and further the Board after determination of the final figure has to make declaration in that behalf. Such declaration will be final and conclusive and the Bank shall be paid that amount. If such exercise is not carried out, naturally, the amount of loss would not be determined and if the amount of loss is not determined, even the requirements of Rule no.17 of P.F. rules will not stand fully fulfilled. In that event, the Bank will not be able to resort to the action of forfeiting the amount of its contribution towards the petitioner's account. Though Mr.Patel has submitted that there is a substantial difference between the term

'recovery' and 'forfeiture' and for their correct meaning he has relied on Law Lexicon 1997 Edition by P.Ramanath Aiyar. There cannot be any dispute with regard to different meanings attached to those two words. However, considering the construction of Rule nos.17 & 18 of P.F. rules, it very clearly shows that unless and until the required formalities under those rules are carried out and the amount of loss or damage has been determined the Bank cannot forfeit the Employers contribution towards P.F. of the petitioner. In the instant case, the record very clearly shows that such exercise has not been done by the Bank and the conditions which are required for entitling the Bank to forfeit the amount of its contribution towards petitioner's P.F. account have not been fulfilled. The Division Bench of this Court has considered the aforesaid rules and in particular Rule nos.17 & 18 of P.F. rules and it has laid down as under :-

"It will be seen that rule 18 authorises the Bank to withhold contribution made by the Bank to the individual account of the contributor in a case of dismissal for fraud or misconduct provided and only provided the Board, which means Board of Directors, has made a declaration in that behalf. Admittedly, no such declaration had been made by the Board of Directors at the point of time when the suit came up for hearing before the trial Court. This factual position was not disputed. Under the circumstances, the learned trial Judge rightly came to the conclusion that the condition precedent for the exercise of the power to withhold the contribution made by the Bank in the individual account of the plaintiff was not satisfied and that the Bank was not entitled to withhold such sum from the Provident Fund Account. A similar view was taken on the same line of reasoning in the context of Exh.74 in regard to the claim for gratuity amount. Exh.74 in terms inter alia provides that the gratuity amount will not be paid to an officer who, in the opinion of the "Board of Directors", is guilty of misconduct or negligence. The opinion is, therefore, to be formed by the "Board of Directors". It was not in dispute that the Board of Directors had never considered the question at its meeting or formed any such opinion and that there was no such resolution in existence. Under the circumstances, the trial Court came to the conclusion, which was the only possible conclusion, that the condition precedent for

withholding the amount of gratuity as per Exh.74 was also not satisfied. The learned trial Judge accordingly decreed the suit of the plaintiff."

4.2. The Division Bench of this Court in that very judgment has also taken into consideration the provision with regard to payment of gratuity amount which was like in the present case, denied to the petitioner of that case. So far as the gratuity is concerned as can be seen from the record that initially the Bank was not at all sure whether any financial loss was caused and if yes to what extent. It was only after a long delay that the petitioner was given an unpleasant surprise that ultimately the Bank has decided not to pay gratuity to him. A careful reading of clause-3 of schedule-A of Gratuity Rules shows that amount of gratuity can be forefeited under the circumstances mentioned therein. However, forefeiture of the amount can be only to the extent of loss suffered by the Bank on account of the misconduct of the employee in question. It further shows that Bank will be the sole judge of determining the extent of loss and its decision in that behalf will be final. Now the question in this case is whether the Bank has worked out such loss and has intimated the same to the petitioner. Record of the petition shows that the petitioner was informed vide letter dated 29th August, 1988 that according to its Salary Section, Department of personnel, C.O. Bomaby that gratutity of the petitioner was fully forefeited as per the Gratuity Rules, because financial loss that was likely to be caused to the Bank was Rs.1,74,777.65. This letter has been written by the Regional Manager of the Bank at Baroda. It clearly reveals that there was no final amount of the financial loss suffered, was judged by the Bank. Thereafter, as late as 8th May, 1995 the Bank again wrote a letter to the effect that the Bank had sustained susbtaintial financial loss due to negligence shown by the petitioner and their P.F. and Gratuity amount will not be paid to him. Thus it is crystal clear that at no point of time the petitioner has ever been told what was the actual financial loss suffered by the Bank due to the misconduct of the petitioner entailing his dismissal from the service. In that event action forefeiting the gratuity amount is absolutely in violation of aforesaid provisions.

4.3. Moreover, it is an admitted fact that before taking such decision at no point of time the petitioner was given any opportunity to explain to the Bank that the proposed action of forfeiture of the retiral benefits of the petitioner was not called for. This aspect has also

been taken care of by the Division Bench of this Court in the aforesaid decision. Thus it also violates principle of natural justice.

4.4. This brings me to the last submission of Mr.Patel that in the event this Court finds that the declaration as required under Rule 18 has not been made by the Board, the matter should be reverted back to the Board for taking appropriate steps. This argument cannot be accepted because that exercise was required to be carried out long back and the decision in that behalf was required to be taken at that time. However, The decision was ultimately communicated at a very late stage i.e. on 8th May, 1995 almost after 7 long years which again was without following the due procedure. The petitioner cannot be deprived of this benefit any longer, as he has been wrongly denied these benefits almost for 14 years by now.

5. In view of the aforesaid discussion, this petition is required to be allowed. Mr.Pandit has drawn my attention to the prayer clause and has requested that the Bank may be directed to pay interest on the delayed payment of the P.F. as well as the gratuity amount. Considering the circumstances of record and in view of the judgment of the Apex Court rendered in the case of Gorakhpur University v. Shitla Prasad Nagendra reported in A.I.R. 2001 S.C. 2433, in my opinion it would be in the fitness of things that on the amount of arrears of P.F. as well as of gratuity the respondent - Bank is directed to pay interest at the rate of 12% per annum. The respondent Bank is, therefore, directed to pay to the petitioner the amount of Banks contribution of P.F. concerning petitioner together with interest at the rate of 12% from the date of such amount became payable till realisation. The respondent - Bank is also directed to pay the amount of gratuity admissible under the law to the petitioner together with 12% interest from the date it became payable to the petitioner till realisation. The aforesaid exercise to be carried out on or before 30th September, 2002.

With the aforesaid direction, this petition is allowed. Rule is made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

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